



6560.50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R06-OAR-2010-0776; FRL-9498-2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning; Louisiana; Baton Rouge Area: Redesignation to Attainment for the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the State of Louisiana's request to redesignate the Baton Rouge, Louisiana moderate 1997 8-hour ozone nonattainment area to attainment of the 1997 8-hour ozone standard. As a part of this action, EPA is also approving, as a revision to the Louisiana State Implementation Plan (SIP), the state's 1997 8-hour ozone maintenance plan with a 2022 Motor Vehicle Emissions Budget (MVEB) for the Baton Rouge Nonattainment Area (BRNA or BR), revisions to the Louisiana SIP that meet the Reasonably Available Control Technology (RACT) requirements (for nitrogen oxides (NOx) and volatile organic compounds (VOCs)) for the 1-hour and 1997 8-hour ozone standard requirements, and a state rule establishing a maintenance plan contingency measure. EPA finds that with this final approval the area has a fully approved SIP that meets all of its applicable 1997 8-hour ozone

requirements and 1-hour anti-backsliding requirements under section 110 and Part D of the Federal Clean Air Act (CAA or Act) for purposes of redesignation.

DATE: This rule is effective **[insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2010-0776. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Planning Section, Air Planning Branch, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business is Monday through Friday, 8:30 to 4:30, excluding Federal holidays. **FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367; fax number 214–665– 7263; e-mail address rennie.sandra@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” means EPA.

Table of Contents

- I. What is the background for this rule?
- II. What comments did we receive on the proposed rule?
- III. What actions is EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the background for this rule?

The background for today’s action is discussed in detail in EPA’s August 30, 2011, proposal to approve Louisiana’s redesignation request (76 FR 53853). In that proposed action, we noted that, under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 parts per million (ppm) (see 69 FR 23858, April 30, 2004, for more information). Under the CAA, EPA may redesignate a nonattainment area to attainment if sufficient complete, quality-assured data are available to determine that the area has attained the standard and if it meets the other CAA redesignation requirements in section 107(d)(3)(E).

The LDEQ, on August 31, 2010, submitted a request¹ to redesignate the Baton Rouge area to attainment for the 1997 8-hour ozone standard. EPA has previously determined that the

¹ The submittal was supplemented by technical amendments on February 14, 2011, May 16, 2011, and June 6, 2011. All submitted documents are in the docket for this rulemaking.

BRNA ozone nonattainment area attained both the 1997 8-hour and 1-hour ozone standards. The EPA determined that the BRNA had attained the 1997 8-hour ozone standard on September 8, 2010, at 75 FR 54779. Complete, quality-assured monitoring data for 2006–2010 also show that the area continues to attain the 1997 8-hour ozone standard. EPA also determined that the BR area met the 1-hour ozone standard on February 10, 2010 (75 FR 6570). This determination was also based on complete, quality-assured, and certified ambient air quality monitoring data for the 2006 - 2008 ozone seasons, as well as certified data for 2009 and 2010 that indicate the area continues to attain the 1-hour ozone NAAQS. Preliminary data available for the 2011 ozone season indicate that the area continues to be in attainment for both ozone standards.²

Our proposed rule and Technical Support Document provide a detailed analysis of how Louisiana met the redesignation requirements and other CAA requirements. The state's Control Techniques Guidelines rule upon which this action depends, was signed on November 7, 2011, and will be published in a separate rulemaking. Implementation of Reformulated Gasoline (RFG) in the Baton Rouge 5-parish area remains stayed by court order. Implementation of RFG is not required for purposes of redesignation.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period, which closed on September 29, 2011. EPA received 3 comment letters in response to the proposed rulemaking, submitted on behalf of the Louisiana Chemical Association, Louisiana Mid-Continent Oil and Gas Association, and the Baton Rouge Area Chamber of Commerce, that expressed overall support for EPA's proposed approval to redesignate the BR ozone nonattainment area to attainment for

² On September 22, 2011, EPA moved ahead to implement the 2008 8-hour ozone standard of 0.075 ppm. Memorandum from Gina McCarthy to Air Division Directors, Regions 1-10. EPA will continue to work with the state to implement this new standard.

the 1997 8-hour ozone standard. The comment letters are available for review in the docket for this rulemaking.

III. What actions is EPA taking?

EPA is taking final action to approve several related actions under the Act for the BR ozone nonattainment area, consisting of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes. Consistent with the Act, EPA is taking final action to approve a request from the state of Louisiana to redesignate the BRNA to attainment of the 1997 8-hour ozone standard.

EPA is taking final action to approve into the SIP, as meeting section 175A and 107(d)(3)(E)(iv) of the Act, Louisiana's maintenance plan for the BR area for the 1997 8-hour ozone NAAQS. The maintenance plan shows maintenance of the standard through 2022. Additionally, EPA has found adequate and is approving the 2022 MVEBs for NO_x and VOC. The submitted NO_x and VOC MVEB for the BR area is defined in Table 1 below.

Table 1
NO_x and VOC MVEB
(summer season tons per day)

Pollutant	2022
NO_x	6.96
VOC	7.55

We are also taking final action to approve a contingency measure for the maintenance plan.

Consequently, EPA is taking final action to approve the State's request to redesignate the area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. After evaluating Louisiana's redesignation request, EPA has determined that with this final approval of the above-

identified SIP elements and the maintenance plan, the area meets the redesignation criteria set forth in section 107(d)(3)(E) and section 175A of the Act. The final approval of this redesignation request changes the official designation in 40 CFR part 81 for the BR area from nonattainment to attainment for the 1997 8-hour ozone standard.

We find that the BR area meets all the applicable CAA requirements for purposes of redesignation of the 1997 8-hour standard that includes all of the antibacksliding CAA requirements for the BR 1-hour severe ozone nonattainment area. Therefore, along with this final redesignation to attainment for the 1997 8-hour ozone standard and our previous determination of attainment of the 1-hour ozone standard, the 1-hour anti-backsliding obligations to submit planning SIPs to meet the attainment demonstration reasonably available control measures (RACM) requirements, ROP and contingency measures requirements, cease to apply. In addition, after final redesignation to attainment for the 1997-8-hour ozone standard, EPA does not require the continued application of nonattainment New Source Review. Louisiana's Prevention of Significant Deterioration (PSD) program can apply in the Baton Rouge area so long as Louisiana interprets its SIP as applying PSD to the BRNA in these circumstances. As we noted in the proposal, Louisiana's PSD program will become effective in BRNA upon redesignation to attainment unless a SIP revision is necessary; then it must adopt and submit that to EPA for action.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond

those imposed by State law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the Clean Air Act for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely do not impose additional requirements beyond those imposed by State law and the Clean Air Act. For that reason, these actions:

- Are not “significant regulatory actions” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within

which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: November 7, 2011.

Al Armendariz,

Regional Administrator, Region 6.

40 CFR parts 52 and 81 are amended as follows:

PART 52-[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T - Louisiana

2. Section 52.970 is amended as follows:

a. The table in paragraph (c) entitled, “EPA Approved Louisiana Regulations in the Louisiana SIP” is amended under Chapter 22, Control of Emissions of Nitrogen Oxides (NO_x), by adding a new entry for Section 2201, and, immediately following the entry for Section 2201.H.3, by adding a new entry for Section 2202;

b. The second table in paragraph (e) entitled, “EPA Approved Louisiana Nonregulatory Provisions and Quasi-Regulatory Measures” is amended by adding a new entry at the end.

The additions read as follows:

§ 52.970 Identification of plan

* * * * *

(c) ***

EPA Approved Louisiana Regulations in the Louisiana SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
* * * * *				
Chapter 22 – Control of Emissions of Nitrogen Oxides (NOx)				
Section 2201	Affected Facilities in the Baton Rouge Nonattainment Area and the Region of Influence	1/20/2010	[Insert date of <u>FR</u> publication], [Insert <u>FR</u> page number where document begins]	Revisions to Section 2201 approved in the Louisiana Register January 20, 2010 (LR 36:60)
* * * * *				
Section 2202	Contingency Plan	1/20/2010	[Insert date of <u>FR</u> publication], [Insert <u>FR</u> page number where document begins]	Section 2202 approved in the Louisiana Register January 20, 2010 (LR 36:63)
* * * * *				

(e) ***

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EPA Approved Louisiana Nonregulatory Provisions and Quasi-Regulatory Measures

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
* * * * *				
Baton Rouge Ozone Nonattainment Area Redesignation Request and Maintenance Plan	Baton Rouge, LA	8/31/2010	[Insert date of <u>FR</u> publication], [Insert <u>FR</u> page number where document begins]	

3. Section 52.977 is amended by adding paragraph (d) to read as follows:

§ 52.977 Control strategy and regulations: Ozone.

* * * * *

(d) Redesignation for the 1997 8-hour Ozone Standard. Effective **[Insert date 30 days from date of publication in the Federal Register]**, EPA has redesignated the Baton Rouge area to attainment for the 1997 8-hour ozone standard. With this final redesignation to attainment for the 1997 8-hour ozone NAAQS and the final determination of attainment for the 1-hour ozone NAAQS in paragraph (a) of this section, the 1-hour anti-backsliding obligations to submit planning SIPs to meet the attainment demonstration and reasonably available control measures requirements, the rate of progress and contingency measures requirements, and any other outstanding 1-hour requirements, cease to apply.

PART 81-[AMENDED]

4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

5. In § 81.319, the table entitled, “Louisiana-Ozone (8-Hour Standard)” is amended by: revising the entries for Baton Rouge Area; and adding a new footnote 2 at the end of the table.

The revisions and addition read as follows:

§ 81.319 Louisiana.

* * * * *

Louisiana-Ozone (8-Hour Standard)

Designated area	Designation ^a		Category/Classification	
	Date ¹	Type	Date ¹	Type
Baton Rouge Area:				
Ascension Parish	(²)	Attainment		
East Baton Rouge Parish	(²)	Attainment		
Iberville Parish	(²)	Attainment		
Livingston Parish	(²)	Attainment		
West Baton Rouge Parish	(²)	Attainment		
* * * * *				

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¹ This date is June 15, 2004, unless otherwise noted.

² Effective [Insert date 30 days after publication in Federal Register].

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[FR Doc. 2011-30785 Filed 11/29/2011 at 8:45 am; Publication
Date: 11/30/2011]